

**MASSACHUSETTS TRIAL COURT
ADMINISTRATIVE OFFICE OF THE TRIAL COURT
OFFICE OF COURT INTERPRETER SERVICES**

**CODE OF PROFESSIONAL CONDUCT
FOR COURT INTERPRETERS OF THE TRIAL COURT**

Section

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1.01: Nature

A court interpreter is the communication facilitator for the parties involved in a proceeding, and as such plays a vital role in the protection of the rights of non-English speakers engaged as parties or witnesses in legal proceedings in the Trial Court Departments. The fulfillment of this role requires an understanding by the interpreter of the complexities of the task to be performed and the fundamental ethical principles and standards to be followed pursuant to M.G.L. c. 221C and M.G.L. c. 221 s. 92a.

- (1) Purpose. These standards seek to:
 - (a) Assure meaningful access to all Trial Court Departments and court services for non-English speakers;
 - (a) Protect the constitutional rights of criminal defendants to the assistance of court interpreter during court proceedings;
 - (b) Ensure due process in all phases of litigation for non-English speakers:
 - (c) Ensure equal protection of the law for non-English speakers:
 - (e) Increase efficiency, quality, and uniformity in handling proceedings which involve a court interpreter;

- (f) Encourage the broadest use of professional language interpreters by all those in need of such services within the Trial Court.
- (2) Scope. These standards define and govern the practice of court interpretation in the Trial Court of Massachusetts.
- (3) Applicability. These standards apply to court interpreters appearing:
 - (a) In any proceeding before any Trial Court of the state;
 - (b) Before any attorney or court in connection with any matter that is or may be brought before a court;
 - (c) In any other activity ordered by the court or conducted under the supervision of a court.

1.02: Definitions

For the purposes of this Code, the following words shall have the following meaning:

Certified Interpreter, an interpreter who has been duly trained and certified under the direction of the Trial Court’s Coordinator of Court Interpreter Services, pursuant to M.G.L. c. 221C, s. 7 (e).

Consecutive Interpretation, relaying a message from one language into another in a sequential manner after the speaker has completed a thought. The speaker may pause at regular intervals to facilitate the conveyance of his statements through the interpreter.

Cultural Fluency, awareness and full comprehension of cross-cultural factors including but not limited to, expectations, attitudes, values, roles, institutions, and linguistic differences and similarities.

Interpreter, one who is readily able to interpret spoken language, sign language, or written language.

Qualified Interpreter, a certified interpreter who has also passed the examination and been qualified for interpreting in federal courts, or a sign language interpreter as determined by the Massachusetts Commission for the Deaf and Hard of Hearing pursuant to G.L. 221S, 92A.

Non-English speaker, a person who uses only or primarily a spoken or signed language other than English.

Simultaneous Interpretation, to speak contemporaneously with the speaker with minimal pauses.

Summarize, make a summary of the chief points or thoughts of the speaker; e.g., summary interpretation, a non-verbatim account of the statements made by the speaker.

1.03 Requirements

(1) **Accuracy**

- (a) Each court interpreter shall faithfully and accurately interpret what is said without embellishment or omission while preserving the language level of the speaker to the best of said interpreter's skill and ability.
- (b) Each court interpreter shall provide the most accurate form of a word in spite of a possible vulgar meaning. Colloquial, slang, obscene or crude language as well as sophisticated and erudite language shall be conveyed in accordance with the usage of the speaker. An interpreter is not to tone down, improve, or edit any statements.
- (c) A court interpreter shall speak in clear, firm, and well-modulated voice that conveys the inflections, tone, and emotions of the speaker.
- (d) A court interpreter shall not simplify statements for a non-English speaker even when the interpreter believes the non-English speaker cannot understand the speaker's language level. The non-English speaker may request an explanation or simplification if necessary to the court or counsel through the interpreter.

- (2) **Impartiality.** Each court interpreter shall maintain an impartial attitude at all times and avoid unnecessary discussions with counsel, parties, witnesses, interested parties, either inside or outside the courtroom, to obviate any appearance of partiality.

(3) **Confidentiality**

- (a) Each court interpreter shall guard confidential information and not betray the confidences which may have been entrusted to him by any parties concerned.

- (b) Disclosures made out of court by communication of a non-English speaker through an interpreter to another person, shall be privileged communication and said interpreter shall not disclose such communication without permission of said non-English speaker; provided, however, that such non-English speaker had a reasonable expectation or intent that such communication would not be so disclosed. M.G.L. c. 221C, s.4(c)
- (4) **Proficiency.** Each court interpreter shall provide professional services only in matters or areas in which the interpreter can perform accurately.
 - (a) Each court interpreter shall continuously improve language skills and cultural fluency; as well as increase knowledge of the various areas within the judiciary, which may be encountered in court interpretation. An interpreter should attend workshops, seminars, conferences, or courses to keep current in the changes of the law, interpretation and translation theories and techniques, receive updates to existing glossaries of technical terms, and exchange information with colleagues.
 - (b) A court interpreter is responsible for having the proper legal and bilingual dictionaries readily available for consultation.
 - (c) A court interpreter shall withdraw from any case in which his/her performance will be adversely affected due to lack of proficiency, preparation or difficulty in understanding the speaker for any reason, including insurmountable linguistic and / or cultural differences, or complexity of conceptual or technical terms to be used in the proceedings. Such withdrawal may be made at the time of the pre-appearance interview with the non-English speaker, or at any other appropriate time.
- (5) **Demeanor**
 - (a) Each court interpreter shall maintain a low profile, speak at volumes appropriate to the context, and be as unobtrusive as possible. The positioning in the courtroom and the style of work shall contribute to maintaining a natural atmosphere, as there would be if no language barrier existed.
 - (b) The court interpreter shall be positioned in full view of, and specially situated to assure proper communication, but shall not obstruct the view of the judge, jury or counsel. The interpreter shall always be positioned so that the non-

English speaker can hear or see everything the court interpreter says or signs and so that the interpreter can hear or see everything that is said or signed during the proceedings.

- (c) The court interpreter shall be familiar with the courtroom layout, particularly the location of the microphones for the electronic recording of the proceedings.
- (c) Each court interpreter shall appear on time and report immediately upon arrival to the clerk of the court.

(6) Case Preparation

- (a) Each court interpreter shall prepare for the case, whenever possible, and particularly with respect to lengthy and complex criminal and civil trials, by reviewing the case material, including the charges, police or other reports, complaints or indictments, transcript of interviews, motions, or any other documentation to be used in the case, particularly if counsel plans to quote directly from them. Such requests shall be made to the attorney processing the case with the awareness and consent of both parties. The information is to be used solely for the technical preparation of the court interpreter.
- (a) Each court interpreter shall interview the non-English speaker prior to the initial court appearance in order to instruct such speaker as to the proper role of the court interpreter during the proceeding. Approval of counsel shall be obtained by the court interpreter before attempting contact with the non-English speaker; counsel may wish to be present at the pre-appearance interview.
- (b) The non-English speaker will be instructed by the court interpreter as follows.
 - 1. The non-English speaker will be advised that the court interpreter will translate any statements or comments at all time.
 - 1. The non-English speaker shall be instructed not to ask direct questions of the court interpreter or initiate any independent dialogue with said interpreter including legal advice or explanations on any statement made during the proceedings. The non-English speaker shall be instructed to direct all questions to counsel or court when necessary.

1. The court interpreter shall familiarize him/herself with the speech pattern or sign language communication, cultural background, and native language level of proficiency of the non-English speaker.
1. The court interpreter shall familiarize the non-English speaker with the interpretation mode to be used and with the hand technique used in interpretation for segmenting lengthy testimony.
1. The non-English speaker shall be instructed to wait for the full interpretation of the English before responding to a question.
1. The non-English speaker shall be instructed not to maintain eye contact with the interpreter except in the case where the non-English speaker is deaf. Eye contact is crucial in this case.
- (7) **Oath.** Each court interpreter shall be sworn for the record before engaging in the interpretation of a proceeding as follows, “Do you solemnly swear that you will interpret accurately and impartially to the best of your ability, in the case now pending before this court, so help you God?”
- (7) **Modes of Court Interpreting**
 - (a) The **simultaneous mode** of court interpretation requires the interpreter to speak contemporaneously with the speaker whose statements are being heard. This mode shall be used when non-English speakers are in a position of a third person vis-à-vis the proceedings; e.g. at counsel table.
 - (b) The **consecutive mode** of court interpretation requires the interpreter to allow the speaker to complete his/her thought or statement before attempting its interpretation. This mode shall be used when non-English speakers are giving testimony or when the judge, counsel, or officer of the court is in direct dialogue with such speaker
 - (c) A court interpreter shall not summarize court proceedings at any time unless instructed to do so by court (e.g., side-bar, jury selection, charge to the jury).
- (9) **Modes of address**
 - (a) Each court interpreter shall utilize the first person singular when interpreting for a non-English speaker giving testimony or in dialogue with another person. Persons addressing the non-English speaker (e.g.,

attorneys, judges, probation officers, and clerks) shall use the second person.

- (a) A court interpreter shall address the court and identify him/herself as the interpreter using the third person singular to protect the record from confusion

(10) Language and/ or Hearing Difficulties

- (a) Whenever there is a word, phrase or concept which the court interpreter does not understand, the interpreter shall so inform the court so that, at its discretion, it may order an explanation, rephrasing, or repetition of the statement. The interpreter may request time to look up an unfamiliar word in the Dictionary.
- (a) Whenever the court counsel utilizes a word, phrase, or concept which the court interpreter finds may confuse the non-English speaker, particularly when a concept has no cultural equivalent in the non-English speaker's language or when it may prove ambiguous in translation, the interpreter shall so inform the court.
- (b) Whenever a court interpreter has difficulty hearing and, therefore, interpreting, a particular speaker, or the proceeding in general, due to the noise level in the courtroom, the speaker's voice level, or because there may be more than one person speaking at the same time, the court interpreter shall so inform the court so that, at its discretion, it may order the speaker to repeat the statement, raise his/her voice, modulate better, and/or change the positioning of the interpreter in the courtroom.

(11) Errors

- (a) Whenever a court interpreter discovers his/her own error, he/she shall, if still at the witness stand, correct the error at once, first identifying him/herself for the record. If the error is perceived after testimony has been completed, the court interpreter shall request a bench or lobby conference with judge and counsel, explain the problem, and make the correction on the record.
- (a) Whenever an alleged error is perceived by someone other than the court interpreter, that person should, if testimony is still being taken from the stand, bring the allegation to the attention of the court. If the error occurs in a jury trial, the allegation should not be brought to the attention of the jury. A side-bar should be requested so that the matter

may be brought to the attention of the court. At that time the court will determine first whether the issue surrounding the allegedly inaccurate interpretation is substantial enough to warrant correction. If the court agrees that the error could be prejudicial, then the court shall hear evidence as to what the correct interpretation should be from information submitted by both counsels, from the court interpreter (who is already an expert witness), and from any other experts selected by the judge. The judge shall make a final determination in view of the evidence as to the correct interpretation. If the determination is different from the original interpretation, then the court shall amend the record accordingly and so instruct the jury, if necessary.

- (b) A copy of the pertinent corrections of the record shall be sent to the Coordinator of Court Interpreter Services within two weeks of the identification of the error.

(12) **Difficulties While Interpreting**

- (a) Each court interpreter shall interpret the exact response of the witness or speaker even if the answer to a question is non-responsive, leaving issues of admissibility of such response to the court and counsel.
- (a) If a witness testifying in a foreign language occasionally uses a few words in English, the court interpreter shall repeat such words for the record so that a person listening to the recorded proceeding may continue following the interpreter's voice. However, should the witness utter a full English response, the interpreter will not ask the witness to respond in his/her native language. Rather, the interpreter will stand back so that the parties are aware of the English response and await the court's direction.
- (b) Whenever an objection is made, the court interpreter shall interpret everything that was said up to the objection and instruct the witness by hand gesture not to speak until the court has ruled on the objection.
- (a) Whenever a serious communication problem arises between the interpreter and the non-English speaker (person is being disruptive, does not allow the interpreter to speak, etc.), or whenever there is a need to instruct the witness as to proper usage of the interpreter by such non-English speaker, the court interpreter shall bring such matter to the immediate attention of the court or counsel so that time may be allowed to solve such problem.
- (a) A court interpreter shall not characterize or give gratuitous explanation of testimony. The court or counsel will request clarification from the non-English

speaker through the interpreter when necessary. Except in the case of certain gestures or grimaces that may have a cultural significance, the interpreter shall not offer an explanation or repeat a speaker's gesture or grimace which has been seen.

- (b) A court interpreter shall not correct erroneous facts posed in questions to non-English speakers. Similarly, the interpreter shall never correct the testimony of non-English speakers, even if errors are obvious. A response of a non-English speaker shall never be inferred; e.g., if the witness is asked to clarify her/his prior answer regarding direction or place, the interpreter shall pose the question as asked and not volunteer what the interpreter thought the speaker meant.

(13) **Fatigue Factor**

- (a) If a court interpreter believes that the quality of the interpretation is about to falter due to fatigue the interpreter shall so inform the court.
- (b) For any proceeding that will entail in excess of two hours of continuous simultaneous interpretation, two court interpreters should, where practical, be assigned so that they can relieve each other at periodic intervals and prevent fatigue and delays.

1.04: Limitations

- (1) **Substitutions and cancellations.** A court interpreter shall not arrange directly with the court or counsel for a substitute in cases to which he/she has been assigned. Rather, a 24-hour cancellation notice shall be given to the Coordinator of Court Interpreter Services who will arrange for a substitute. Sign Language Interpreters shall report to the Court Interpreter Referral Specialist at the Mass. Commission for the Deaf and Hard of Hearing.
- (2) **Availability of Court Interpreter.** A court interpreter shall not leave the courtroom until the proceedings are terminated or he/she is excused by the presiding judge, clerk-magistrate, or their designee. During brief recesses, an interpreter shall be available to court and counsel as necessary.
- (3) **Conflicts of Interest**
 - (a) A court interpreter shall not engage in nor have any interest, direct or indirect, in any business or transaction, nor incur any obligation which is in conflict with the proper discharge of official duties in the court or which impairs independence of judgement in the discharge of such duties.

- (b) A court interpreter shall not derive personal profit or advantage from any confidential information acquired while acting in professional capacity.
- (c) A court interpreter shall not accept money or consideration of favors from anyone other than the court for the performance of an act they would be required or expected to perform in the regular course of assigned duties; nor shall the interpreter accept any gifts, gratuities, or favors of any kind which might be construed as an attempt to influence his/her actions with respect to the court.
- (d) A court interpreter shall not use, for private gain or advantage, the court's time or facilities, equipment, or supplies, nor shall he/she use or attempt to use his/her position to secure unwarranted privileges or exemptions for him/herself or others.
- (e) A court interpreter shall not serve in any proceeding in which he/she is an associate, friend, or relative or party, of counsel for a party, or a witness; or when he/she, his/her spouse, or child are a party to the proceeding or have a financial interest or any other interest that would be affected by the outcome of the proceeding; or when he/she has been involved in the selection of counsel; or any other interest which would prevent that interpreter from being impartial.
- (f) Prior to providing services in a proceeding in court, a court interpreter shall disclose on the record any services that he/she may have previously provided on a private basis to any of the parties involved in the matter, as well as anything else that could be reasonably construed as affecting his/her ability to serve impartially or as constituting a conflict of interest. This disclosure shall not include confidential information.
- (f) During the course of a trial, a court interpreter shall not discuss the case with parties, jurors, attorneys, or with friends or relatives of any party, except in the discharge of official function.
- (4) **Public Comments.** A court interpreter shall not discuss publicly, report or offer an opinion concerning a matter in which he/she has been engaged and while such matter is pending.
- (5) **Legal Advice**
- (a) A court interpreter shall not give any legal advice of any kind to anyone whether solicited or not. In all instances, the non-English speaker shall be referred to counsel or to court. An interpreter may give only information to a non-English

speaker regarding the time, place, and nature of the court proceedings. All other matters shall be referred to court or counsel.

- (b) A court interpreter shall never act as an individual referral service for any attorney. When asked to refer a non-English speaker to an attorney, the interpreter shall refer such individual to the local bar association in civil and criminal matters if the individual indicates that he can afford private counsel or, if not, to the Committee for Public Counsel Services in criminal matters or other matters for which C.P.C.S provides services or the local Legal Aid office with respect to all other matters.

1.05: Compliance

- (1) A court interpreter who discovers anything which would impede full compliance with this Code shall immediately report to the court.
- (1) A court interpreter shall immediately report to the presiding judge any solicitations or efforts by another to induce or encourage him/her to violate any law or standard of this Code or any other provision governing interpretation promulgated by the judiciary.
- (1) A court interpreter may be removed by the court from his/her participation in a particular assignment if that interpreter is unable to interpret the proceedings adequately, including an instance where the interpreter self-reports such inability.
- (1) After due notice and hearing, a court interpreter may be removed from the list of Trial Court Interpreters by the Coordinator of Court Interpreter Services, for inadequate performance or if a judge has found good causes for his/her removal from the proceeding. The following are good causes for removal from a proceeding: (M.G.L. c. 221C, s.5)
 - (a) Knowingly and willfully making false interpretation while serving in an official capacity;
 - (b) Knowingly and willfully disclosing confidential or privileged information obtained while serving in an official capacity;
 - (c) Failing to follow the standards prescribed by law and the ethics of the interpreter profession.

- (5) Should a court interpreter feel harassed or intimidated by an officer of the court, the interpreter shall so inform the presiding judge.

Regulatory Authority

M.G.L. c. 221C.

ADOPTED IN 1988